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Tom Thornton
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1800 Washington Boulevard, Suite 540
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Dear Mr. Thornton,

Frederick County Government supports the goals to protect and restore the Chesapeake Bay and has contributed significant and sustained efforts voluntarily to this end. The County has concerns about the mechanisms proposed by the Maryland Department of the Environment in the Phase I Watershed Implementation Plan and provides the following comments:

1. The WIP incorrectly states on page 2-14 that Frederick County passed legislation to implement a stormwater utility fee.
2. Goals for Phosphorus reduction for the Urban Sector exceed the goals for Nitrogen reduction, yet most of the goals in the WIP are stated in terms of Nitrogen. This makes quantifying the effort to meet these goals impossible.
3. Table C on page ES-12 indicates that the goals for the TMDL would be met for Urban Stormwater in 40 years, but that 3-4 times the current capacity would be needed to meet the goals by 2020. In reality, the capacity would have to be significantly increased beyond 3-4 times current levels due to increasing marginal costs and efforts to retrofit. The most cost effective restoration efforts occur first. These increases pose a financial hardship to Frederick County, and there are inadequate mechanisms available from outside sources to significantly help fund such an enormous effort.
4. Significant increases to the requirement to retrofit untreated urban impervious areas are considered to "close the gap" between the predicted and needed reductions. The permit currently requires an additional 10% every five years. Tripling or quadrupling this effort, as mentioned in the table on page ES-15, poses the following issues:
    a. MDE held a meeting recently with Phase I MS4 municipalitics to figure out how to credit retrofit projects, as there is currently no standard for water quality for retrofitting untreated urban impervious areas. Discussed were several options, including retrofitting WQ to the Maximum Extent Practicable, retrofitting to the 1" storm, retrofitting to the MD2007 stormwater regulations, and retrofitting to forested conditions; in an example where 0.6" of rainfall is the maximum extent practical for water quality due to site constraints, is the project treating a full acre of retrofit duc to MEP requirements, 60% of an acre using the 1" requirement, or some other proportion of an acre? If we do not count the entire acre as

treated, we will run out of acres to treat before we have hit 100% retrofit. If we do count the entire acre as treated, then we may reach 100% retrofit before we have restored designated uses. This highlights the fact that the retrofit requirement does not tie directly to the nutrient reductions required to correct the designated use impairments; this requirement should be eliminated, and projects tracked according to their reductions of impairing substances using monitoring data and/or numbers accepted by the Chesapeake Bay TMDL model.

b. The retrofit requirement disregards the watershed assessments that are required by NPDES MS4 Phase I permits that actually look at the sources of designated use impairments and develop watershed restoration projects to correct the impairments; thus, there is no clear connection between the stormwater management facility retrofit requirement and the designated use impairment. The stormwater manager is encouraged to retrofit in areas with no impairment, and may under-restore areas with actual impairments in trying to meet this requirement. Again, it would make more sense to be held directly to the MS4 allocations in the TMDL than to have a secondary requirement that does not directly tie into the designated use impairment.
c. There are significant discrepancies between State, Bay Program and local estimates of urban impervious cover as noted on page 4-2. Should we be held to impervious area reductions, we should be able to use our own estimates, as they are based on the most accurate data available.
d. Stormwater retrofits are prohibitively expensive per acre, and the increased requirements would pose a significant hardship to Frederick County.
e. Other types of water quality restoration that would be more cost-effective than stormwater retrofitting are not permitted as substitutions/trades, though there are trading programs established between WWTPs and agriculture, for example. Frederick County has proposed a trading program for years but this has not been met with enthusiasm at MDE. We should also be able to trade with agriculture or with other BMPs that might be identified in the future. For example, if we were to pay for additional cover crops in the cover crop program, we would get credit for the reductions from the amount of the BMP we would pay for. Or we could look to get a partial restoration credit for land conservation activities (using a but-for option in a trading scenario) and track them through an established service like BayBank. Land conservation helps to protect and restore existing tracts of important green infrastructure, particularly in areas with local impairments.
f. Stormwater retrofitting is not the only water quality restoration that can occur in urban areas; for example, Frederick County is converting a significant area of the landscape to trees. This is a very effective mechanism for reductions from urban pollutants and should count under NPDES MS4 permit goals and not just under "natural filter" requirements, lest these programs be forced to compete with one another.

5. According to pages 2-10 and 5-23, "A key goal of the Bay restoration strategy will be to install stormwater controls (retrofits) and water quality improvement projects on land that was developed prior to the implementation of Maryland's Stormwater Management Law in 1985, and enhancing water quality for early BMPs implemented between 1985 and 2002." There are several issues with this:
   a. There is no recognition of the water quality benefit of practices installed prior to 1985, such as open section roads, and there is an unclear recognition of benefits from 1985-2002.
   b. This requirement adds additional retrofit requirements to MS4 permits in addition to the 30-40% retrofit requirement discussed as a gap closure measure, as it effectively increases the number of untreated urban acres.
   c. This requirement disregards the watershed assessments that are required by NPDES MS4 permits that actually look at the sources of designated use impairments and develop watershed restoration projects to correct the impairments; thus, there is no clear connection between the stormwater management facility retrofit requirement and the designated use impairment. The stormwater manager is encouraged to retrofit in areas with no impairment, and may under-restore areas with actual impairments in trying to meet this requirement. This encourages jurisdictions to meet the letter but not the spirit of the regulations.
6. If the strategies fall short of the 2017 goal, MDE proposes to "increase MS4 permit requirement for MD's largest counties and the State Highways Administration to require installation of stormwater controls on 40%

or 50% of their impervious surface by 2017 in their jurisdictions that do not already have stormwater controls. The 2020 goal would increase to 60% or 70%, respectively, depending on the option selected

- Establish a Chesapeake Bay Watershed Restoration requirement in the NPDES municipal stormwater permits [note this is already written into draft NPDES MS4 permit];
- Require an implementation plan and schedule;
- Monitor and report compliance; and
- Continue to provide technical assistance, training, and outreach." (p. 5-23).

Issues:

a. It would be unrealistic to propose retrofitting 20% of a county's untreated urban impervious area in a three year period when Frederick County currently struggles to meet a 10% impervious area reduction in a five-year period, from both a financial and organizational perspective.
b. The bulleted goals are proposed in the current draft NPDES MS4 Phase I permits, which appears to be jumping ahead of schedule from the Phase I WIP.

7. 5.2.3 Natural Filters: As discussed above, when in urban areas, these types of projects should count towards the NPDES MS4 Phase I permit goals for restoration as a strategy for watershed restoration to restore designated use impairments. Furthermore, these types of projects could be eligible for trades with urban requirements when placed on non-urban lands that have met their minimum reductions for the Chesapeake Bay TMDL. DNR could administer such a program under the guise of trading ecosystem services.
8. Note that NPDES MS4 permits are listed in the document as both point and nonpoint source, and this should be made consistent. This is of particular importance to 6.1 Point Source: Tracking and Reporting because it is unclear if NPDES MS4 permits will be required to complete Discharge Monitoring Reports (DMR) and Monthly Operating Reports (MORs).
9. According to the WIP, "All stormwater retrofits and urban water quality improvement projects are being reported to Maryland BayStat. The data appear on spreadsheets that specify permit requirements, compliance status, nitrogen reduction benefits, and operating and capital expenditures toward meeting the 2-year milestones. BayStat reviews retrofit implementation and pollutant loads and considers proposed contingency actions. This information has been provided via electronic data tables or hard copies annually to MDE Stormwater program coordinators." Frederick County is not aware of this and to its knowledge, this is not the case. Frederick County is not required to report on N reductions so it is unclear how BayStat would be getting this information.
10. According to the WIP, "MDE's Science Services Administration Program ensures that the reported practices fit into EPA/Chesapeake Bay Program Model. Maryland's stormwater management practices will follow the Maryland Design Manual and includes Stormwater Ponds, Stormwater Infiltration, Stormwater Filtration, Open Channel Practices, Environmental Site Design (ESD) practices, Alternative Surfaces, etc." This list needs to be significantly expanded to take credit for all of the types of projects NPDES MS4 Phase I jurisdictions are counting towards urban retrofit requirement.
11. Frederick County would be negatively affected by Forest Conservation Act Enforcement recommendations, particularly the no net loss of forest requirements and the elimination of the fee in lieu program. The fee in lieu program is being used to target larger tracts of ecologically significant forest and areas with designated use impairments; this is not possible without the program. The county has also found that these fees often provide a greater opportunity for a net increase in forest acreage than the minimum requirement.
12. 5.2.3 Natural Filters "University of Maryland Extension at the Wye Research and Education Center will begin a project similar to Baltimore County's Rural Residential Stewardship Initiative for the Maryland Monocacy watershed expressly for water quality impacts. This project is based on the peer-to-peer education model and will feature a weekend workshop. Landowners will learn both afforestation and outreach techniques, and the workshop participants will be tasked with afforesting their own land and reaching out to others to do the same. The Natural Resource, Agriculture, and Engineering Service published a manual titled, "The Woods in Your Backyard" and this information will play an integral role in the work in the Monocacy." Frederick County is unfamiliar with this project at the Wye Center and sent an email to Jonathan Kays who runs the Woods in Your Backyard program; he is also not aware of this program. Frederick County submitted a grant with the Woods in Your Backyard program to the National Fish and Wildlife Foundation but it was not accepted.
13. The County is uncertain how we would implement "offsets" for new development without regulatory authority to require any action beyond current Stormwater Management and Forest Resource Ordinance regulations.

Which types of agencies would be involved (Planning, Soil Conservation District, Permitting and Development Review, Public Works, Health department, other)? Would the offset requirement go into land use planning in some specific manner?

14. In general, the WIP indicates that the State will rely on local governments to participate in and support accounting of nutrient loads associated with growth. Additional coordination is not currently in place to track or report on these loads. Tools and support would be required to meet this objective.
15. Wetland banking is listed as a potential offset tool. Will the State continue to administer that, or will they expect the counties to? How would that work within an offset trading program?
16. For Wastewater Treatment Plants, the County should not have any difficulty complying with the new TMDL and WIP at this time. However, if there is a need to upgrade and increase the capacity of a wastewater treatment plant should arise, there may be total nitrogen and total phosphorus loading caps that would need to be met that may require BNR or ENR treatment at these WWTPs.
17. The Bay Model has numerous areas where it is known to be inadequate or inaccurate, particularly in the area of judging relative sediment contributions from land versus instream erosion, yet counties are being held to precise standards for pollutant loading estimates. There is no flexibility for counties in the proposed allocations arising from this and other uncertainties. We echo the Maryland Association of Counties' (MACo's) concern that "The Chesapeake Bay Phase 5 Watershed Model continues to show improvements and refinements over previous versions, but ultimately the Model is still limited, being subject to inaccuracies and "best guess" estimates. Given that the Model is still imperfect but that State and county governments are being asked to undertake precise nutrient reduction tracking the Environmental Protection Agency (EPA) must commit to further refining the Model AND show some flexibility in allowing States and counties to present data and that may not be incorporated or accounted for by the Model. In short, the Model should not be a be-all and end-all for data measurement and analysis."

Frederick County also echoes the concerns of the Maryland Association of Counties on the following points:

- *Local Flexibility to Meet the Goals*
- *Counties Need Many Quantifiable Nutrient Reduction Tools*
- *Bay Model Should Not Be Sole Determinant for Progress*
- *Counties Need Fiscal Support*
- *Counties Need Technical Support*
- *Use of Growth Offsets*
- *Nutrient Trading Must Be Clarified*
- *Separate the TMDL Targets From NPDES MS4 Permits Until Phase II WIP Completed*
- *Do Not Eliminate Forest Conservation Act Fee-In-Lieu Program*

We appreciate the opportunity to address our concerns with the Draft Phase I Watershed Implementation Plan and express our commitment to the restoration of the Chesapeake Bay and its tributaries.

Regards,

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Division of Public Works